XI-HC-78

89

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.40/01 and 1007/ **सन्** 200 1

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Criminal Appeal No.40 of 2001	
	APPELLANTS:	1. Nandkumar, S/o Chedilal Suryavanshi, Age 25 years. 2. Jag Prasad, S/o Jhariram Suryavanshi, Aged 35 years. 3. Khilawan, S/o Shiv Suryavanshi, Aged about 45 years. 4. Latelram, S/o Rambhau @ Ram Bharos, Aged 65 years. 5. Rajkumar, S/o Latelram, Aged 32 years. 6. Ramsharan, S/o Jhari Ram Suryavanshi, Aged about 40 years. All residents of Village: Chorha Devri, P.S. Ratanpur, Distt. Bilaspur (Chhattisgarh).
		- Versus -
	RESPONDENT:	State of Chhattisgarh
	AND	
	Criminal Appeal No.1007 of 2001	
	APPELLANT:	Keshav Prasad, S/o Narayan Suryavanshi, Aged about 32 years, R/o Village: Chorha Devri, P.S. Ratanpur, Distt. Bilaspur (Chhattisgarh).

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 40/01 and 1007/ सन् /2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

- Versus -

RESPONDENT: State of Chhattisgarh

Present:

Mr. Abhay Tiwari, counsel for the appellants.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

ORAL JUDGMENT

(Delivered on 30th March, 2007)

L.C. BHADOO, J.

1. Criminal Appeal No.40/2001 filed by Nand Kumar & five others and Criminal Appeal No.1007/2001 filed by Keshav Prasad are arising out of the same judgment, therefore, they are being disposed of by this common judgment.

2. By these appeals, the accused/appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 13th December, 2000, passed by the Additional Sessions Judge & Special Judge, Bilaspur, in Sessions Trial No.185/2000, whereby learned Additional Sessions Judge convicted and sentenced them as under: -

Offence under which convicted	Sentences imposed
Section 147 of the I.P.C.	R.I. for one year to each accused
Section 148 of the I.P.C.	R.I. for two years to each accused

P.T.O.

91

मामला क्रमांक G.A. 40/01 Cmd 1007/ **सन्** 200 /

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Section 452 read with Section 149 of the I.P.C.	R.I. for three years and fine of Rs.500/- each, in default of payment of fine to further undergo R.I. for three months to each accused.
	Section 323 read with Section 149 of the I.P.C. for causing injury to Vijay Kumar	R.I. for six months to each accused
	Section 323 read with Section 149 of the I.P.C. for causing injury to Kamta Prasad	R.I. for six months to each accused
	Section 427 read with Section 149 of the I.P.C.	R.I. for one year to each accused
	Section 302 read with Section 149 of the I.P.C.	Life imprisonment to each accused

Learned Additional Sessions Judge further directed that the substantive sentences imposed upon each accused shall run concurrently.

3. Case of the prosecution, in brief, is that at about 8.30 p.m. of 7-3-2000 at Village: Choradevri, the accused persons formed unlawful assembly and in furtherance of common object committed riot by beating Vijay Kumar, Kamta Prasad & Ganeshia Bai. At that time, the accused persons were carrying deadly weapons like Lathi & axe and after making preparation to assault Vijay Kumar, Kamta Prasad & Ganeshia Bai, the accused persons trespassed their house and also abused them in filthy language. In furtherance of common object, they inflicted

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.40/01 and 1007 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

simple injuries to Vijay Kumar & Kamta Prasad and they committed mischief by damaging T.V. & deck of Vijay Kumar and committed murder of Ganeshia Bai by assaulting her with Lathi & axe.

4. The matter was reported by Vijay Kumar to Police Station: Ratanpur upon which the first information report Ex.P-1 was registered. The Investigating Officer left for the scene of occurrence. After giving notice to the witnesses, he prepared inquest Ex.P-28 on the body of Ganeshia Bai. The body of Ganeshia Bai was sent for post-mortem examination to the District Hospital, Bilaspur, where Dr. N.S. Chandel conducted post-mortem and prepared the report Ex.P-4 in which he opined that the death is due to injury to head. Sealed packet of the clothes of Ganeshia Bai was seized under Ex.P-5. While in police custody, accused Nandkumar gave memorandum Ex.P-8 regarding axe and in pursuance of that, axe was seized under Ex.P-9. Accused Jag Prasad gave memorandum Ex.P-10 and in pursuance of that, axe was seized under Ex.P-11. Accused Khilawan gave memorandum Ex. P-12 and in pursuance of that, one bamboo stick was seized under Ex.P-13. Accused Latelram gave memorandum Ex.P-14 and in pursuance of that, one bamboo stick was seized under Ex.P-15. Accused Rajkumar gave memorandum Ex.P-16 and in pursuance of that, one bamboo stick was seized under Ex.P-17. Accused Keshav Prasad gave memorandum Ex.P-18 and in pursuance of that, one bamboo stick was seized under Ex.P-19. Accused Ramsharan gave memorandum Ex.P-20 and in pursuance of that, one bamboo stick was seized under Ex.P-21. Shirt of accused Nandkumar was seized under Ex.P-22. Lungi of accused Jag Prasad was seized under Ex.P-23. One jacket of accused Khilawan was seized under Ex.P-24. One shirt

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

93

मामला क्रमांक Cr.A.40/01 and 1007/ **सन्** 200(

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of accused Keshav Prasad was seized under Ex.P-25. Site plan Ex.P-25 was prepared by the Patwari. Injuries of Kamta Prasad were examined by Dr. R.K. Pandey and injury report Ex.P-34 was prepared. Injuries of Vijay Kumar were examined by Dr. R.K. Pandey and injury report Ex.P-35 was prepared. Injuries of Ganeshia Bai were examined by Dr. R.K. Pandey and injury report Ex.P-36 was prepared. Recovered articles were sent for chemical examination to Divisional Forensic Science Laboratory, Bilaspur, from where the report Ex.P-49 was received.

5. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

6. The prosecution examined 19 witnesses at the trial. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent, they have been falsely implicated in the crime.

7. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced each of the accused persons as aforementioned.

8. We have heard Mr. Abhay Tiwari, learned counsel for the appellants and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent.

P.T.O.

मामला क्रमांक G.A.40/01 and 1007/ सन् 200(

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. Mr. Abhay Tiwari has not disputed the homicidal death of Ganeshia Bai. Moreover, as per the evidence of the eyewitnesses namely, Kamta Prasad (PW-1), Vijay Kumar (PW-3), Mst. Savita Bai (PW-4), Kamlesh Kumar (PW-12), also the evidence of Dr. N.S. Chandel (PW-7) who has stated in his evidence that the injuries sustained by Ganeshia Bai on head were grievous and were sufficient in the ordinary course of nature to cause death, the death was on account of head injury, it is established that the death of Ganeshia Bai was homicidal in nature.

10. As far as Criminal Appeal No.1007/2001 filed by Keshav Prasad against his conviction and sentence under Sections 147, 148, 452 read with Section 149, 323 read with Section 149 for causing injury to Vijay Kumar, 323 read with Section 149 for causing injury to Kamta Prasad, 427 read with Section 149 for causing mischief and 302 read with Section 149 of the I.P.C. for committing the murder of Ganeshia Bai, is concerned, except Kamlesh Kumar (PW-12), no other witness has stated that Keshav Prasad was involved in the Marpit or he trespassed the house after making preparation to attack or commit the murder. Kamlesh Kumar (PW-12) has stated in his evidence that after opening the door accused Keshav Prasad pressed Kamta with Lathi, whereas, Kamta Prasad (PW-1) himself has stated in his evidence that accused Keshav Prasad came with Lathi and asked him & Jag Prasad not to indulge in quarrel. Vijay Kumar (PW-3) has not stated regarding involvement of Keshav Prasad in the Marpit, on the contrary, he has stated that when Marpit started Keshav Prasad ran away. Savita Bai (PW-4) has also not stated that accused Keshav Prasad was involved

P.T.O.

मामला क्रमांक Cr.A.40/01 and 1007/01 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in the Marpit. Even Nirmala (PW-17) has not stated anything regarding involvement of accused Keshav Prasad in the Marpit.

11. Therefore, there is no legal admissible evidence on record regarding involvement of accused/appellant Keshav Prasad in any of the crimes for which he has been convicted, nor there is evidence that he was forming a common object with other accused persons, as such, conviction and sentences of accused/appellant Keshav Prasad under the above Sections cannot be sustained.

12. In the result, the criminal appeal bearing No.1007/2001 filed by Keshav Prasad succeeds and the same is allowed. He is acquitted of the above charges. Conviction and substantive sentences imposed upon him under the above offences are set aside. It is stated that Keshav Prasad is already on bail, therefore, he need not surrender to his bail bonds and his bail bonds are discharged.

13. Now, coming to conviction and sentence imposed upon accused/ appellants Nandkumar, Jag Prasad, Khilawan, Latelram, Rajkumar & Ramsharan under Section 302 read with Section 149 of the I.P.C. for committing the murder of Ganeshia Bai, Nirmala (PW-17) has stated in her evidence that she was married to accused Jag Prasad. But once Baldau, father of Vijay Kumar (PW-3), committed rape on her, therefore, a prosecution was launched against Baldau. During the pendency of that criminal case, the matter was compromised. She was kept as wife of Kamta Prasad after observing social customs i.e. bangle marriage which is commonly observed in Chhattisgarh. Thereafter, at the request of Jag Prasad, her original husband, a Panchayat was convened and in that Panchayat it was decided that

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 40/01 and 1007 **सन्** 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

since the wife of Jag Prasad namely, Nirmala has been kept by Kamta Prasad, Jag Prasad be compensated. But no compensation was paid to Jag Prasad. One day, when she went to fetch water from a public hand pump, Jag Prasad met her, asked her not to take water from the hand pump and told her that she should ask her second husband to pay compensation to him. She returned without taking water. When she reached house, Kamta Prasad asked her as to why she has returned without water. Thereafter, Kamta Prasad took her to the hand pump again, at that time, Kamta Prasad was carrying Lathi in his hand. Jag Prasad was already standing there. There was exchange of abuses among Jag Prasad & Kamta Prasad and they returned. At about 8 p.m., Kamta Prasad left his house carrying axe in his hand. when his wife Nirmala persuaded him not to go, he left the house after pushing her and went to the shop of Haroon. Accused Khilawan was sitting there. Therefore, Kamta Prasad assaulted accused Khilawan on his back with backside of the axe. Thereafter, there was exchange of abuses between the accused persons and Kamta Prasad. At that time, Ramsharan, Keshav & Rajkumar were not there.

14. Therefore, from the above facts, it is clear that the background of the crime in question was the assault made by Kamta Prasad on Khilawan with the axe. It appears that thereafter, the accused/appellants herein came to the house of Kamta Prasad carrying Lathis & axe, where Kamta Prasad, his brother Kamlesh, nephew Vijay, his mother Ganeshia Bai and Savita were taking their meals.

15. Kamta Prasad (PW-1) has stated in his evidence that at the time of assault, accused Ramkhilawan, Latel, Jag Prasad & Nandkumar came

मामला क्रमांक G.A.40/01 and 1007/ **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

with Lathi & axe, accused Ramsharan, Rajkumar & Latel were carrying Lathi and accused Jag Prasad & Ramkhilawan were carrying axe. Accused Jag Prasad & Ramkhilawan attacked Kamta Prasad with backside of the axe as a result of which he sustained injury on knee and fell down. His nephew Vijay Kumar was standing there, he asked the accused persons "Stop Stop" on which accused Ramkhilawan assaulted him with backside of the axe which hit on his head and Vijay Kumar fell down. Thereafter, Ganeshia Bai, mother of Kamta Prasad, came running and asked that her son should not be assaulted. As Kamta Prasad was lying down, Ganeshia Bai, his mother, fell on him in order to save him from the assault. Thereafter, accused Jag Prasad & Khilawan assaulted his mother with axe which hit on her head. Latel asked that she is dead let us go now. Thereafter, Jag Prasad damaged T.V. and deck. PW-1 has further stated that in the year 1997, he kept Jag Prasad's wife Nirmala as his wife after observing the custom of bangle marriage. In November, 1998 Nirmala again went to Jag Prasad. Thereafter, when he started residing at Village: Chorha Devri, Nirmala again came and stared living with him. Accused Jag Prasad asked him that as he had kept his wife, he should compensate him.

16. Vijay Kumar (PW-3) has stated in his evidence that the accused persons entered the house and started beating. Accused Nandkumar, Jag Prasad, Rajkumar, Latel & Ramsharan were carrying Lathi in one hand and axe in another hand. Accused Khilawan was carrying Lathi only. Khilawan assaulted him on his head and hand with Lathi. All the accused persons attacked his uncle Kamta Prasad, accused Nandkumar, Rajkumar, Jag Prasad & Ramsharan were attacking with

P.T.O.

(98)

मामला क्रमांक C.A. 40/01 and 1007/ सन् 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

axe. Kamta Prasad fell down. In order to save Kamta Prasad, his grand-mother Ganeshi Bai asked as to why her son is being beaten and she covered the body of Kamta Prasad by falling on him. The accused persons assaulted Ganeshia Bai with axe & Lathi as a result of which her head was fractured and brain material came out.

17. Savita Bai (PW-4) has also corroborated the above evidence and stated that the accused persons entered the house and started beating Kamta Prasad with Lathi & axe. Accused Nandkumar, Jag Prasad & Ramsharan assaulted Kamta Prasad with axe and remaining accused persons assaulted with Lathi. When Ganeshia Bai came to intervene, Latel assaulted her with Lathi, Jag Prasad & Ramsharan with axe and Khilawan with Lathi, as a result of which she sustained injuries on head, hands & legs. Accused Khilawan assaulted Vijay with Lathi.

18. Kamlesh Kumar (PW-12) has also corroborated the above evidence.

19. From the above evidence, it is established that the cause of quarrel was that Kamta Prasad kept Nirmala, wife of Jag Prasad, as his wife and Jag Prasad was claiming compensation which was not paid by complainant Kamta Prasad. Therefore, there was some dispute between them. On the fateful day, when Nirmala went to fetch water from the hand pump, Jag Prasad asked her to tell Kamta Prasad to pay compensation, therefore, she returned without water. Then Kamta Prasad went to the hand pump and there was some quarrel between Kamta Prasad & Jag Prasad. Thereafter, in the evening, Kamta Prasad assaulted Khilawan on his back with axe. As a retaliation, the accused persons carrying Lathi & axe in their hands came to the house of Kamta Prasad to give beating to them.

P.T.O.

मामला क्रमांक G.A.40/01 and 1007 **सन्** 200 /

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20. In the background of these facts and evidence on record, it cannot be inferred that the accused persons formed unlawful assembly in order to commit the murder of Ganeshia Bai. In fact, when beating was given to Khilawan by Kamta Prasad, all the accused persons came to give beating to Kamta Prasad & others as a retaliation.

21. In the circumstances, form the above evidence it cannot be held that the accused persons came after making preparation or with premeditation for committing the murder of Ganeshia Bai and when they started beating Kamta Prasad, Ganeshia Bai all the way came in order to save Kamta Prasad, therefore, the accused persons assaulted her also and she sustained fatal injuries. But the manner in which the accused persons carried Lathis & axe and assaulted Kamta Prasad & others, it can be inferred that the accused persons were having knowledge that by assaulting with Lathi & axe they are likely to cause death. Therefore, common object of the assembly was not to commit the murder of Ganeshia Bai, but to give beating to Kamta Prasad, who attacked Khilawan with axe in the evening. Hence, conviction and substantive sentences imposed upon accused persons Nandkumar, Jag Prasad, Khilawan, Latelram, Rajkumar & Ramsharan under Section 302 read with Section 149 of the I.P.C. cannot be sustained. Instead thereof, they are liable to be convicted for commission of offence under Section 304 Part-II of the I.P.C. For this view, we are fortified by the judgment of the Apex Court in the matter of **Ramkishan and others vs. State of Rajasthan** reported in **1998 Cri.L.J. 54**.

22. As far as conviction and sentences imposed upon accused persons Nandkumar, Jag Prasad, Khilawan, Latelram, Rajkumar & Ramsharan

मामला क्रमांक Cr.A.40/2001 and 1007 सन् 200(

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Sections 147, 148 and 452 read with Section 149 of the I.P.C. are concerned, from the evidence mentioned earlier, it is established that the accused persons went to the house of Kamta Prasad carrying Lathis & axe in their hands with intention to assault. Therefore, they have been rightly convicted for rioting, armed with deadly weapons and entering the house of Kamta Prasad after preparation for causing hurt, assault or wrongful restraint. Further, the accused/appellants have been rightly convicted and sentenced under Sections 323 read with Section 149 of the I.P.C. for causing injury to Vijay Kumar and 323 read with Section 149 of the I.P.C. for causing injury to Kamta Prasad. They have been rightly convicted under Section 427 read with Section 149 of the I.P.C. also, for damaging T.V. & deck.

23. In the result, Criminal Appeal No.40/2001 of the appellants namely, Nandkumar, Jag Prasad, Khilawan, Latelram, Rajkumar & Ramsharan partly succeeds and the same is partly allowed.

a. Conviction and substantive sentences imposed upon them under Section 302 read with Section 149 of the I.P.C. are set aside and they are acquitted of the said charge, instead thereof, each of them is convicted under Section 304 Part-II read with Section 149 of the I.P.C. and sentenced to undergo R.I. for five years.

b. Conviction and sentences imposed upon them under Sections 147, 148, 452 read with Section 149, 323 read with Section 149 for causing injury to Vijay Kumar, 323 read with Section 149 for causing injury to Kamta Prasad and 427 read with Section 149 of the I.P.C. are maintained. All the substantive sentences

P.T.O.

मामला क्रमांक CG.A.40/01md/1007 **सन्** 200 /

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

imposed upon them shall run concurrently, as has been ordered by the trial Court.

c. It is stated that accused Nandkumar & Jag Prasad are in detention for about seven years, therefore, they be set at liberty forthwith, if not required in any other case.

d. Remaining accused persons namely, Khilawan, Latelram, Rajkumar & Ramsharan are on bail. They are directed to surrender before the trial Court to serve out the remaining sentence. However, it is made clear that they shall be entitled for set off for the detention period already undergone by them against the above sentence imposed upon them.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Soma